FILE COPY

FILED
MAR 28 1929
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1928.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. [redacted] 6

RAUL ROGERIO GONZALEZ, by his Guardian *ad litem* Leon Gonzalez,

Petitioner,

v.

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA,

Respondent.

APPENDIX TO RESPONDENT'S BRIEF.

WILLIAM D. GUTHRIE,
GEORGE J. GILLESPIE,
Of counsel for respondent-defendant
The Roman Catholic Archbishop of Manila.

Pandick Press, Inc., 22 Thames St., New York. U. S. A.

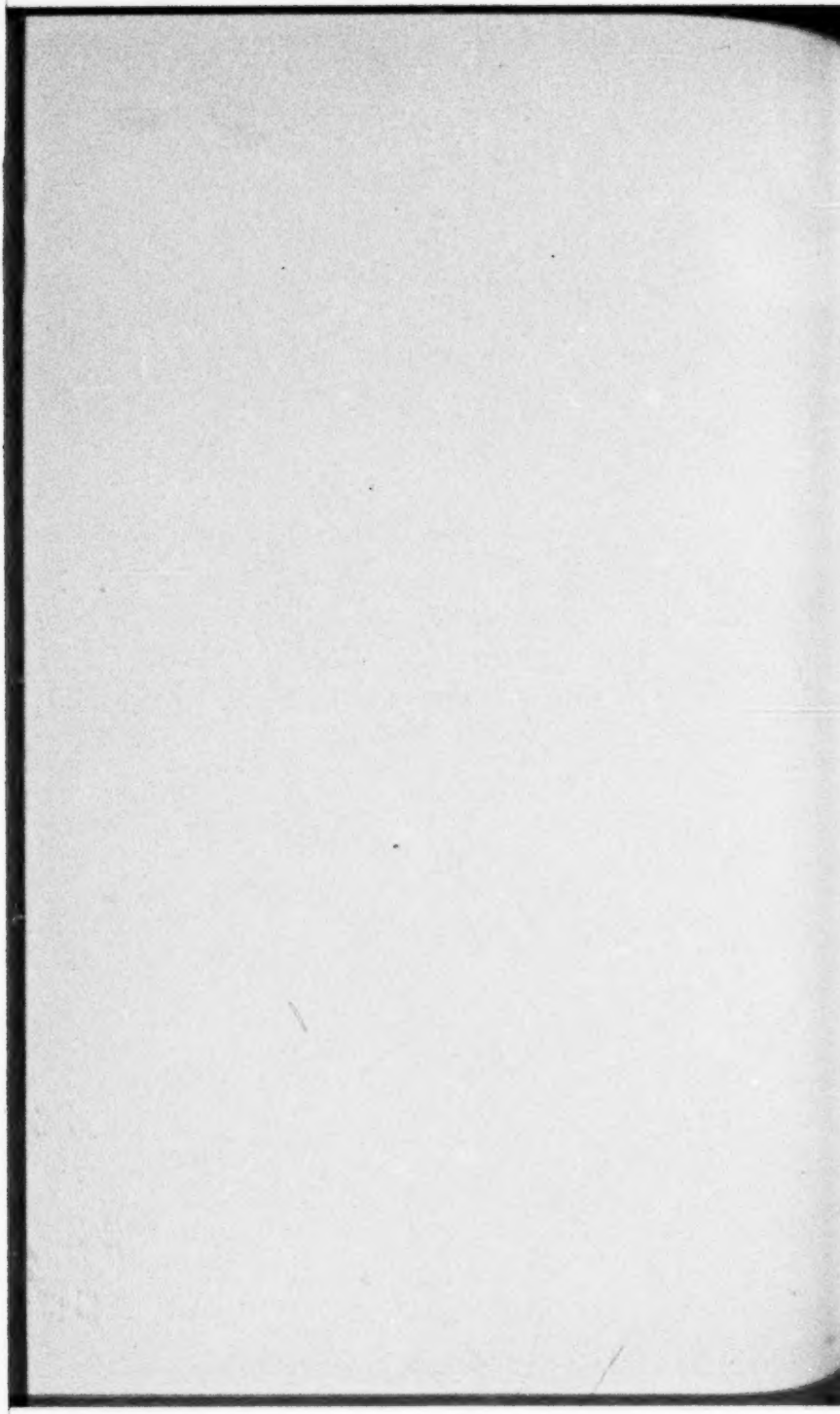

TABLE OF CONTENTS.

		PAGE
I.	Glossary of Spanish and ecclesiastical terms	1
II.	Canons of Codex Juris Canonici of 1917	10
III.	Opinion of Dr. Bustamante, of Havana, Cuba, as to Spanish Law	19
IV.	Decrees of Council of Trent (1545-1563)	27
V.	Extracts from writers on Canon Law	30
VI.	Plaintiff's testimony	56

I.

GLOSSARY OF SPANISH AND ECCLESIASTICAL TERMS.

Bachiller (Sp.):

"1. Bachelor, one who has obtained the first degree in the sciences and liberal arts" (Velasquez Dictionary of the Spanish and English Languages).

Benefice:

"2. An ecclesiastical living; a church office endowed with revenue for its proper fulfillment; the revenue itself" (The Century Dictionary and Cyclopedia).

Benefice, ecclesiastical:

"Según los teólogos es el cargo ú oficio en la Iglesia; constituido con autoridad del obispo y dotado de renta perpetua; mas segun los canonistas es una porcion de los bienes de la Iglesia, señalada á un eclesiástico para que goce de ella durante su vida por retribucion del servicio que hace ó debe hacer a la Iglesia en el ministerio á que es llamado; ó sea el derecho de usar de ciertas cosas de la Iglesia, concedido al clérigo para durante su vida por el cargo ú oficio que desempeña. Dicese derecho de usar, porque los cánones no conceden á los clérigos sino la facultad de tomar de la renta eclesiástica lo absolutamente preciso para su manutencion, debiendo repartir el resto entre los pobres." (Escriche, Paris, 1862, Diccionario Razonado de Legislación y Jurisprudencia, p. 366).

Translation.

According to theologists, it is a position or office in the church; instituted with authority of the bishop and vested with perpetual rents; but according to canonists it is a portion of the properties of the church set aside for an ecclesiastic in order that he may enjoy (goce) it during his life as reward for the services which he does or ought to do to the church in the ministry to which he is called; that is, the right to use of certain properties of the church, granted to a clergyman dur-

ing his life for the position or office which he occupies. It is said that it is the right to use (derecho de usar) because the canons do not give the clergymen but the right of using the ecclesiastical rents in what is absolutely necessary for his maintenance (manutencion), as the surplus must be distributed among the poor.

Benefice, secular:

"The benefice is said to be *regular* if held by one qualified to fulfil the duties of the office; *secular*, if held by a layman" (Century Dictionary).

Benefice, simple:

"A benefice involving no other obligation than service in the public offices of the church is *simple*" (Century Dictionary).

Canonical (See also Institution, canonical):

"2 . . . specifically regulated by or in accordance with the canons of the church" (Century Dictionary).

Capellan (Sp.):

"Chaplain; clergyman" (Appleton's New English-Spanish and Spanish-English Dictionary, 1928).

Capellania (Sp.):

"Chaplaincy" (Appleton's Dictionary).

Chaplaincy, Collative chaplaincy, Laical chaplaincy:

"A chaplaincy is an institution which has the obligation to celebrate or cause to be celebrated annually a certain number of masses in a determined church or altar, conforming to the will of the founder. A chaplaincy is either laical or collative.

"A *laical chaplaincy* is that instituted without the intervention of the ecclesiastical authority: it does not require a title in order to be ordained, and the possessor is only obligated to cause to be celebrated, or to celebrate, if he is a priest, a certain number of masses in accordance with the foundation. The laical or *mercenary* chaplaincies are not subject to the ecclesiastical authority, which, with regard thereto, has no other

right than to investigate if the obligations are fulfilled; and this is one of the characteristics which most distinguish the said chaplaincies from the collative chaplaincies."

"A *collative chaplaincy* is that instituted with the intervention of the ecclesiastical authority; and requires a title of ordination. It is called ecclesiastical because it is in the form of ecclesiastical benefice, and it is proper for the Bishop to confer it. When the foundation calls for relatives of the founder or of the persons whom he designated as trunk, to enjoy the chaplaincy, the latter is called *colativa familiar;* when individuals of a certain family are not called to the possession but the patron is authorized to appoint, then the chaplaincy is called *colativa simple* or *gentilicia*" (Alcubilla, Diccionario de la Administracion Española, fifth edition, Madrid, 1892, vol. ii, p. 259; Record, p. 360).

Chaplaincy, ecclesiastical and lay:

"Such chaplaincies are called either ecclesiastical or lay. They are ecclesiastical if the property donated by a founder has been formally erected into a benefice by the proper spiritual authority. If, however, the property designed for the purpose of procuring certain acts of Divine service has not received ecclesiastical erection it is called a lay chaplaincy" (Catholic Encyclopedia vol. iii, p. 580).

Christian Doctrine:

"Christian Doctrine is the Word of God revealed by Jesus Christ to the Church and received by her in all its fulness, guarded by her in all its integrity, and taught by her through the bishops in communion with the Pope . . ." (Taunton, London, 1906, The Law of the Church, p. 181).

Clergy:

"1. The clerical estate or order . . . the estate or office of a cleric or clerk (in ecclesiastical orders): the clerical office . . .

2. The clerical order; the body of men set apart by ordination for religious service in the Christian church; opposed to *laity*. . . ." (Oxford Dictionary).

Clergyman:

"1. A man of the clerical order; an ordained minister of the Christian church; one in holy orders. . . ." (Oxford Dictionary).

Clergy, Secular:

"Living in the world, not in the cloister; hence, not bound by monastic vows or rules, nor subject to a monastic order; used especially of parish priests and other non-monastic clergy, as distinguished from the monastic or *regular* clergy" (Century Dictionary, *sub. tit.*, "secular").

Cleric:

"Cleric, a person who has been legitimately received into the ranks of the clergy. By clergy in the strict sense is meant the entire ecclesiastical hierarchy" (Catholic Encyclopedia, vol. iv, p. 49).

Clericus (Latin):

Cleric; one who has been initiated in the first tonsure (see Canon 108, §1, *infra*, p. 10).

Colativa (Sp.):

"Collative" (Appleton's Spanish-English Dictionary).

Collate:

"6. *Eccles.* a. To confer (a benefice) on a person.

b. To appoint or institute (a cleric) to a benefice. Now said of an ordinary who institutes to a living in his own gift or patronage, or which has lapsed to him by neglect or disablement of the patron" (Oxford Dictionary).

Collative:

"A chaplaincy is called collative if the founder bestows his goods for spiritual purposes in such a way that the bishop is to erect the foundation into a benefice . . ." (Cath. Encyc., vol. iii, p. 580).

Collation:

"11. *Eccles.* a. The bestowal of a benefice or other preferment upon a clergyman.

b. (more usually) The appointment of a clergyman to a benefice; now *techn.* Institution by the ordinary to a living which is in his own gift" (Oxford Dictionary).

Congrua (Sp.):

"A competent sustenance assigned to him who is to be ordained a priest" (Velasquez Spanish Dictionary).

Diocese:

"3. The district, with its population, falling under the pastoral care of a bishop" (Century Dictionary).

Discipline:

"6. *Eccles.* The system or method by which order is maintained in a church, and control exercised over the conduct of its members; the procedure whereby this is carried out; the exercise of the power of censure, admonition, excommunication, or other penal measures, by a Christian Church. . . .

b. Hence, generally, the system by which the practice of a church, as distinguished from its doctrine, is regulated . . ." (Oxford Dictionary).

Doctrine:

"2. b. That which is taught or laid down as true concerning a particular subject or department of knowledge, as religion, politics, science, etc., a belief, theoretical opinion; a dogma, tenet" (Oxford Dictionary).

Institution, Canonical:

"Institution, Canonical (Lat. *institutio,* from *instituere,* to establish), in its widest signification denotes any manner, in accordance with canon law, of acquiring an ecclesiastical benefice. . . . In its strictest sense the word denotes the collation of an ecclesiastical benefice by a legitimate authority, on the presentation

of a candidate by a third person (institutio tituli collativa)" (Catholic Encyclopedia, vol. viii, p. 65).

Irregularity:

"5. *Eccles.*, in the Rom. Cath. Ch., infraction of the rules governing admission to the clerical office and discharge of its functions; a canonical impediment to reception of orders, exercise of clerical functions, or advancement in the church" (Century Dictionary).

Lay:

"1. Of persons: Belonging to the 'people' as contradistinguished from the clergy; not in orders, non-clerical.

2. Characteristic of, connected or concerned with, occupied or performed by, laymen or the laity" (Oxford Dictionary).

Mestizo:

"A Spanish or Portuguese half-caste; now chiefly, the offspring of a Spaniard and an American Indian" (Oxford Dictionary).

Order:

"6. *Eccles.* a. A grade or rank in the Christian ministry, or in an ecclesiastical hierarchy.

b. The rank, status, or position of a clergyman or ordained minister of the Church. Now always *pl.*, more fully *holy orders.* Hence the phrases *to take orders,* to enter the ministry or the Church, to be ordained; *in orders,* in the position of an ordained clergyman or minister of the Church; *in deacon's orders, in priest's* or *full orders.*

c. The conferment of holy orders, the rite of ordination; in the Latin Church reckoned as one of the seven sacraments" (Oxford Dictionary).

Ordinary:

"1. *Eccles.* and Common law. One who has, of his own right, and not by special deputation, immediate jurisdiction, in ecclesiastical cases, as the archbishop in a province, or the bishop or bishop's deputy in a diocese" (Oxford Dictionary).

Ordination:

"2. The act of ordaining, or conferring holy orders; appointment or admission to the ministry of the Church; the fact of being ordained" (Oxford Dictionary).

Padre:

" 'Father'; a title applied in Italy, Spain, Portugal and Spanish America, to the regular clergy; in India (from Portuguese), to a minister or priest of any Christian Church; and by natives (in speaking to Europeans) to native priests; hence, applied by English soldiers and sailors to a chaplain" (Oxford Dictionary).

Patron:

"4. *Eccles.*, one who has the right to present a clergyman to an ecclesiastical living, or to other preferment; the person who has the gift and disposition of a benefice" (Century Dictionary).

Patron, spiritual, lay, mixed:

"A spiritual patronage is one belonging to the incumbent of an ecclesiastical office, or established by the foundation of a church or a benefice out of ecclesiastical funds, or instituted by a layman and later presented to the Church. Thus the patronages in possession of secularized bishoprics, monasteries, and ecclesiastical foundations are regarded as spiritual. A lay patronage is established when an ecclesiastical office is endowed by anyone out of private means. A patronage is mixed when held in common by the incumbent of an ecclesiastical office and a layman" (Catholic Encyclopedia, vol. xi, p. 560).

Pension:

"Pension, Ecclesiastical, the right to a certain sum of money to be paid yearly out of the revenues of a church or benefice to a cleric, on account of just reasons approved by an ecclesiastical superior" (Catholic Encyclopedia, vol. xi, p. 645).

Priest:

"3. Specifically, in hierarchical churches, the second in rank in the clerical orders, between bishop and deacon" (Century Dictionary).

Procurator Fiscal } :
Promotor Fiscal }

"Fiscal Procurator. The duties of the fiscal procurator consist in preventing crime and safeguarding ecclesiastical law. . . . His office is comparable to that of the state attorney in criminal cases" (Catholic Encyclopedia, vol. vi, p. 82).

"Promotor Fiscal: A secular or ecclesiastical attorney-general" (Velasquez Spanish Dictionary).

Spiritualize:

"2. To invest with full spiritual or ecclesiastical status or rights. *Obs.* 1641 *Termes de la Ley* 126. If Chappels founded by Lay men were not approved of by the Diocesan, and as they terme it, spiritualized, they are not accounted Benefices" (Oxford Dictionary).

Spolium:

"In *eccles. law,* the property of a beneficed ecclesiastic which could not be legally disposed of by will at death" (Century Dictionary).

Theology:

"The science concerned with ascertaining, classifying, and systematizing all attainable truth concerning God and his relation to the universe; the science of religion; religious truth scientifically stated" (Century Dictionary).

Theology, dogmatic, moral, pastoral:

"*dogmatic theology,* that department of theology which has for its object a connected and scientific statement of theology as a complete and harmonious science as authoritatively held and taught by the church" (Century Dictionary).

"*moral theology,* a phrase nearly equivalent to moral philosophy, denoting that branch of practical theology which treats of ethics, or man's duties to his fellowmen" (Century Dictionary).

"*pastoral theology,* that branch of theology which treats of the personal and official duties of pastors, in distinction from systematic theology, which treats of religious doctrines" (Century Dictionary, *sub tit.* "pastoral").

Title:

"8. *Eccles.* A certificate of presentment to a benefice, or a guarantee of support required (in ordinary cases) by the bishop from a candidate for ordination" (Oxford Dictionary).

Tonsura (Sp.):

"1. Tonsure, the first clerical degree of the Roman Catholic Church" (Velasquez Spanish Dictionary).

Tonsure:

"Tonsure (Lat. *tondere,* 'to shear'), a sacred rite instituted by the Church by which a baptized and confirmed Christian is received into the clerical order by the shearing of his hair and the investment with the surplice" (Catholic Encyclopedia, vol. xiv, p. 779).

Tonsurista (Sp.):

One who has been tonsured (Cf. R. 99 and 322).

Vocation:

"1. The action on the part of God of calling a person to exercise some special function, especially of a spiritual nature, or to fill a certain position; divine influence or guidance towards a definite (esp. religious) career; the fact of being so called or directed towards a special work in life; natural tendency to, fitness for, such work" (Oxford Dictionary).

II.

CANONS OF CODEX JURIS CANONICI OF 1917.

Record, pp. 37-41 (Latin)	Record, pp. 92-98 (English)
Can. 108.* §1.	Can. 108,* Par. 1.
Qui divinis ministeriis per primam saltem tonsuram mancipati sunt, clerici dicuntur.	Clergymen are those already initiated in the first tonsure.
Can. 968.	Can. 968, Par. 1.
Sacram ordinationem valide recipit solus vir baptizatus; licite autem, qui ad norman sacrorum canonum debitis qualitatibus, iudicio proprii Ordinarii, praeditus sit, neque ulla detineatur irregularitate aliove impedimento.	Only baptized males may validly receive ordination; but those, who according to the holy canons have the necessary qualification *in the opinion of the ordinary* and have no irregularity or impediment whatever, may lawfully receive.
2.o Qui irregularitate aliove impedimento detinentur, licet post ordinationem etiam sine propria culpa exorto, prohibentur receptos ordines exercere.	Par. 2. Those who have some irregularity or impediment, although it be after the ordination and without their fault, cannot exercise the orders received.
Can. 976.* §1.	Can. 976,* Par. 1.
Nemo sive saecularis sive religiosus ad primam tonsuram promoveatur ante inceptum cursum theologicum.	No one can be promoted to first tonsure before he has begun the course in theology.
Can. 1354.	Can. 1354. Par. 1.
1. Unaquaeque dioecesis in loco convenienti ab Episcopo	Every diocese must have a seminary or college in an ap-

* Canons 108, par. 1, and 976, par. 1, are cited at record, pp. 59-60, in English. The original Latin text of these two canons does not appear in the record, but is here reproduced for convenience. The canons are printed in numerical order and the italics in English are as in record.

electo Seminarium seu collegium habeat in quo, pro modo facultatum et dioecesis amplitudine, certus adolescentium numerus ad statum clericalem instituatur.

2. Curandum ut in maioribus praesertim dioecesibus bina constituantur Seminaria: minus, scilicet, pro pueris litterarum scientia imbuendis, maius pro alumnis philosophiae ac theologiae vacantibus.

3. Si constitui Seminarium dioecesanum nequeat, aut in constituto Seminario conveniens institutio, praesertim in philosophicis ac theologicis disciplinis, desideretur, Episcopus alumnos in alienum Seminarium mittat, nisi Seminarium interdioecesanum vel regionale, auctoritate apostolica, constitutum fuerit.

Can. 1364. In inferioribus Seminarii scholis:

1.o Praecipuum locum obtineat religionis disciplina, quae, modo singulorum ingenio et aetati accomodato, diligentissime explicetur;

2.o Linguas praesertim latinam et patriam alumni ac-

propriate place selected by the bishop, wherein a certain number of youths may be trained for the clerical state according to the possibilities of the diocese and its extent.

Par. 2. Effort must be made that those larger dioceses will have two seminaries, one small for the literary career, and another large for the career of philosophy and theology.

Par. 3. If no diocesan seminary can be erected or if the one in existence is not sufficient, especially that for theology and philosophy, the bishop shall send the students to another seminary outside, unless there is one in the region or an interdiocesan one instituted by the Holy See.

Can. 1364. In the minor classes:

1. The religion subjects shall have the first place, according to the talent and age of each student.

2. The students shall carefully learn chiefly the lan-

curate addiscant;

guages of the country and latin.

3.o Ea in ceteris disciplinis institutio tradatur quae conveniat communi omnium culturae et statui clericorum in regione ubi alumni sacrum ministerium exercere debent.

3. In other subjects proper instruction shall be given according to the common culture and the state of the clergy of the region where they have to exercise their functions.

Can. 1365.

1. In philososophiam rationalem cum affinibus disciplinis alumni per integrum saltem biennium incumbant.

Canon 1365. Par. 1.

During two full years the students shall study philosophy and allied sciences.

2. Cursus theologicus saltem integro quadriennio contineatur, et, praeter theologiam dogmaticam et moralem, complecti praesertim debet studium sacrae Scripturae, historiae ecclesiasticae, iuris canonici, liturgiae, sacrae eloquentiae et cantus eclesiastici.

Par. 2. The career of theology shall last four years, and besides the dogmatic and moral theology it shall include principally the study of the holy scriptures, ecclesiastical history, canon law, liturgy, religious oratory and ecclesiastical music.

3. Habeantur etiam lectiones de theologia pastorali, additis practicis exercitationibus praesertim de ratione tradendi pueris aliisve catechismum, audiendi confessiones, visitandi infirmos, assistendi moribundis.

Par. 3. They shall, moreover, have lessons in pastoral theology, with practical exercises chiefly in the teaching of cathechism, hearing confession, visiting the sick and attending the dying.

Can. 1442.*

Beneficia saecularia nonnisi clericis e clero saeculari

Can. 1442.*

Simple chaplaincies or benefices are conferred upon

* Canon 1442 is cited at record, p. 59, in English. The original Latin text of this canon does not appear in the record, but is here reproduced for convenience.

conferenda sunt; religiosa sodalibus illius religionis, ad quam beneficia pertinent.

Can. 1448.

Ius patronatus est summa privilegiorum, cum quibusdam oneribus, quae ex Ecclesiae concessione competunt fundatoribus catholicis ecclesiae, capellae aut beneficii, vel etiam eis qui ab illis causam habent.

Can. 1455. Privilegia patronorum sunt.

1.o Praesentandi clericum ad ecclesiam vacantem vel beneficium vacans;

2.o Salva exsecutione onerum et honesta beneficiarii sustentatione, alimenta ex aequitate obtinendi ex ecclesiae vel beneficii reditibus, si qui supersint, quoties patronus ad inopiam nulla sua culpa redactus fuerit, etiamsi ipse iuri patronatus renuntiaverit in commodum Ecclesiae, vel pensio in limine fundationis ipsi patrono fuerit reservata, quae ad sublevandam eius inopiam non sufficiat;

clerygmen of the secular clergy.

Can. 1448.

The right of patronage is a series of privileges, with some charges which by grant of the Church are enjoyed by the catholic founders of a church, chaplaincy or benefice and their successors.

Can. 1455. The privileges of a patronage are:

1. That of presenting a *clergyman* for the church or office vacant.

2. After the charges are paid and a decent support of the beneficiary is covered, that of the right of receiving from the incomes of the church or foundation support by reason of equity if he is reduced to indigence without his fault, and this even if he had waived his right to patronage in favor of the church and even if in making the foundation he has reserved a pension to himself which proves insufficient.

3.o Habendi, si ita ferant legitimae locorum consuetudines, in sui patronatus ecclesia stemma gentis vel familiae, praecedentiam ante ceteros laicos in procesionibus vel similibus functionibus, digniorem sedem in ecclesia, sed extra presbyterium et sine baldachino.

3. To have, if permitted by the custom, the coat of arms of the family in the church of his patronage, and the preferential place over other Christians in the processions and functions and a special seat in the church, but outside of the presbyterium and without canopy.

Can. 1457.

Praesentatio, nullo iusto obstante impedimento, sive agatur de patronatu laicali sive de ecclesiastico et mixto, fieri debet, nisi brevius tempus lege fundationis vel legitima consuetudine praescriptum fuerit, saltem intra quatuor menses a die quo is, cui ius est instituendi, patronum certiorem fecerit de vacatione beneficii et de sacerdotibus qui in concursu fuerunt probati, si agatur de beneficio quod per concursum conferri debet.

Can. 1457.

The presentation, unless prevented by a just cause, whether in a laical patronage, ecclesiastical or mixed, must be made, if the law of the foundation or the lawful custom does not prescribe a shorter period, within the four months following the day when he who is called upon to make the institution notifies the patron that the position is vacant, etc.

Can. 1458.

1. Si intra praescriptum tempus praesentatio facta non fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis.

Can. 1458.

Par. 1. If within the period fixed, no presentation is made, *the church or institution is for that time one of free collation.*

2. Si vero lis, quae intra utile tempus dirimi nequeat, exoriatur sive circa ius prae-

Par. 2. If there is some controversy . . . the collation is suspended until the

sentandi inter Ordinarium et patronum vel inter ipsos patronos, sive circa ius praelationis inter ipsos praesentatos, suspendatur collatio usque ad finem controversiae, et interim, si opus sit, oeconomum ecclesiae, vel beneficio vacanti Ordinarius praeficiat.

end thereof and in the meantime the ordinary shall appoint a vicar.

Can. 1464.

1.o Praesentatio fieri debet loci Ordinario, cuius est iudicare utrum idonea sit persona praesentata.

Can. 1464.

Par. 1. The presentation must be made to the Ordinary of the place, who has *the right to judge* whether the person presented is fit or not.

2.o Ordinarius ad suum formandum iudicium, debet ad norman can. 149 de persona praesentata diligenter inquirere et oportunas noticias, etiam secretas, si opus fuerit, assumere.

Par. 2. In order to form such an opinion, the Ordinary must make inquiry, as required in Can. 149, about the person presented, and if necessary, seek other proper reports even secret.

3.o Ordinarius non cogitur patrono patefacere rationes cur personam praesentatam admittere non possit.

Par. 3. The ordinary *is not bound to state to the patron the reasons* why he cannot admit the person presented.

Can. 1465.

1. Si praesentatus non idoneus fuerit repertus, patronus, dummodo tempus utile ad praesentandum sua negligentia lapsum ne sit, potest alium intra tempus

Can. 1465.

Par. 1. If the one presented is not found fit, the patron may, unless time fixed in Can. 1457 has elapsed through his fault, present another one within the same

de quo in can. 1457 praesentare; sed si ne hic quidem idoneus repertus fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis, nisi patronus vel praesentatus intra decem dies a significatione recusationis recursum a iudicio Ordinarii ad Sedem Apostolicam interposuerit; quo pendente, suspendatur collatio usque ad finem controversiae et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat.

period. If neither the latter is found fit, the church or foundation becomes this time of free collation, unless the patron or the one presented, within ten days from notice to him of the rejection, should file an appeal *to the Apostolic See from the judgment of the ordinary;* in the meantime the collation is suspended, and a vicar appointed to act as chaplain ad interim of the church or foundation.

2. Praesentatio, labe simoniaca infecta, est ipso iure irrita, et etiam institutionem forte subsecutam irritam reddit.

Par. 2. The presentation made for money is absolutely worthless, just as the institution that follows it.

Can. 1466.

1. Legitime praesentatus, et idoneus repertus, acceptata praesentatione, ius habet ad canonicam institutionem.

Can. 1466.

Par. 1. After *the presentation is admitted,* the person lawfully presented is entitled to the canonical institution.

2. Ius concedendi canonicam institutionem proprium est Ordinarii loci, non autem Vicarii Generalis sine mandato speciali.

Par. 2. The right to grant the canonical institution belongs to the ordinary, not the vicar-general without special mandate.

3. Si plures et omnes idonei praesentati sint, Or-

Par. 3. If several persons are presented and all are fit

dinarius eligit quem magis idoneum in Domino iudicaverit.

Can. 1481.

Deductis cuiuslibet generis expensis et salvo praescripto can. 472, n. I, fructus beneficii vacantis pro altera dimidia parte accrescunt doti beneficii vel massae communi, pro altera cedunt fabricae ecclesiae seu sacrario, salva legitima consuetudine qua fructus omnes in bonum commune dioeceseos erogentur.

Can. 1560.

Forum necessarium habent:

1.o Actiones de spolio, coram Ordinario loci rei sitae;

2.o Causae respicientes beneficium, quamvis non residentiale, coram Ordinario loci beneficii;

3.o Causae quae versantur circa administrationem, coram Ordinario loci ubi administratio gesta est;

the ordinary shall choose the one he believes in conscience to be the best of them.

Can. 1481.

After deducting the expenses of the acting chaplain, one-half of *the incomes of the vacant foundation shall be added to the endowment or capital of the institution, and the other half shall be used in the repair of the church and the sacristy, unless there is the custom of using the whole for some good common to the diocese.*

Can. 1560.

The following have necessary forum:

1. Actions of spolium, before the ordinary of the place where the thing is found.

2. Cases relative to *some benefice, although not residential,* before the ordinary of the place of the benefice.

3.* Cases which deal with administration before the ordinary of the place where the administration was conducted.

---

* Not in record.

4.o Causae, quae respiciunt hereditates aut legata pia, coram Ordinario loci domicilii testatoris, nisi agatur de mera exsecutione legati, quae videnda est secundum ordinarias competentiae normas.

4. Cases relative to inheritance or pious legacies, before the ordinary of the place of the testator unless it is merely one for the execution of the legacy, for in that case the ordinary rules of jurisdiction govern.

III.

OPINION OF DR. ANTONIO S. de BUSTAMANTE, OF HAVANA, CUBA, AS TO SPANISH LAW.

MEMORANDUM AS TO SPANISH LAW IN AND PRIOR TO 1898 CONCERNING QUESTIONS INVOLVED IN THE SUIT BROUGHT IN BEHALF OF RAUL ROGERIO GONZALEZ, BY HIS GUARDIAN *AD LITEM*, LEON GONZALEZ, AGAINST THE ROMAN CATHOLIC ARCHBISHOP OF MANILA.

Matters of Fact.

FIRST: On March 13th, 1816, Doña Petronila de Guzman executed, in the Philippine Islands, her testament, and by clause nine thereof she devised a house and ground owned by her for the creation or foundation, immediately after her decease, of a collative chaplaincy, and appointed as first chaplain her great grandson, Don José Telesforo de Guzman, and in default of the latter, her nearest relative, and in default of the latter, a collegian of San Juan de Letran (St. John Letran) being an orphan, half-breed, and native of the same town (R. 33).

SECOND: In a petition filed, April 26th, 1820, by José Telesforo de Guzman, Executor of the estate of said Petronila de Guzman, it was duly prayed that the property destined for the chaplaincy be segregated from temporal properties and transferred to the spiritual properties of the Archbishopric and that canonical collation be conferred on the chaplain named in the will (R. 53).

THIRD: On May 12th, 1820, the Metropolitan Archbishop of the Philippine Islands and the Apostolic Governor of the vacant Archbishopric of the Holy Name of Jesus of Cebú, vested with ecclesiastical jurisdiction in the premises, upon said petition of said Don José Telesforo de Guzman, duly approved the foundation of the chaplaincy in all the terms and conditions of the testament and petition above cited, and in his decree of approval duly converted the charge on said property "into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction" (R. 57).

From these facts relating to the foundation of the chaplaincy now in question, the following legal problems arise with regard to the law of Spain in and prior to 1898, viz:

1. To what class does the chaplaincy belong in the Roman Catholic Church as recognized by the law of Spain?

2. Could the special qualifications prescribed by the new canonical legislation contained in the "CODEX JURIS CANONICI" of Benedict XV (1917) have been required of any chaplain presented for appointment to fill a vacancy if existing prior to 1898?

3. To what purposes would the income of the chaplaincy, in excess of the amount necessary for the saying of the masses ordered by the testatrix, have to be applied during the continuance of a vacancy in the chaplaincy?

(1) To what class does the chaplaincy belong in the Roman Catholic Church as recognized by the law of Spain?

The Roman Catholic Church during the whole of the Nineteenth Century recognized two principal kinds of chaplaincies: the ecclesiastical or collative and the lay. The ecclesiastical or collative differed from the lay in that the former had necessarily to fulfill the following requisites:

1. Canonical establishment, after action and approval by the Bishop.

2. Collative and canonical appointment of chaplain by the Bishop.

3. The title to the property of the foundation had to be vested by deed in the Church.

Such collative chaplaincies could be, in turn, either *colativa simple* or *gentilicia,* with free appointment in the judgment and discretion of the bishop, or "*colativa familiar*" whereby the chaplain must have been an individual of a certain family, but in both cases the collation or appointment had to be made by the bishop.

This classification of chaplaincies is the one made by the most authoritative writers of treatises on the subject, and amongst them may be mentioned the following reliable works:

"Lecciones de Disciplina Eclesiastica", by Drs. Gomez Salar and La Fuente, Madrid, 1880, second volume, page 140, etc.

Gomez Salazar: "Instituciones de Derecho Canónico", Madrid, 1883, third volume, page 542.

Morales: "Tratado de Derecho Eclesiastico General y Particular en España", Sevilla, 1884, volume four, page 39, and succeeding ones.

Salazar: "Procedimientos Eclesiasticos", Madrid, 1868, volume four, page 337, etc.

Campos: "Capellanias Colativas en España", Madrid, 1910, page 26, etc.

Martiny: "Legislación vigente sobre Capellanias Colativas en Cuba", Havana, 1916, page 23, etc.

Almost all these writers maintain that if the founder expresses himself in ambiguous words, so that it is difficult to know the nature of the chaplaincy, and documents are lacking to solve this doubt, it must be considered an ecclesiastical chaplaincy or *colativa simple* to be filled in the judgment or discretion of the Bishop. This is also the opinion of Vechiotti, the well-known authority, Inst. Canon., book three, chapter second, paragraph 12.

In the light of these authorities, it is evident that the chaplaincy in question is of a collative character and that the Bishop must therefore appoint the chaplain in the exercise of ecclesiastical jurisdiction.

It is so called by the testatrix in her last will, and the Apostolic Governor in approving the foundation on May 12th, 1820, expressly converted the devised property "into spiritual property of a perpetual character" and declared that it shall be "subject to the ecclesiastical forum and jurisdiction" (R. 57).

In addition to this, the declaration made at the time with respect to the properties being converted into spiritual ones, removes all possibility of its being considered a lay chaplaincy, and clearly converts it into an ecclesiastical benefice according to long established Spanish Law in force

for generations prior to 1898 and then applicable to the Philippine Islands. This is fully recognized by the writers cited above.

2.—Could the special qualifications or requirements prescribed by the canonical legislation contained in the Codex Juris Canonici of Benedict XV (1917) have been required of any chaplain presented for appointment to fill a vacancy existing prior to 1898?

The foundress does not specify any of the qualifications of the chaplain, and, consequently, she left this matter to the ecclesiastical judgment and regulation. No private individuals ever had power to restrict the right of the Church to decide who should or might be clerics or prescribe their necessary qualifications. A variation in these qualifications would not in the least alter the will of the foundress of the chaplaincy, and it cannot be said that possible aspirants thereto have ever acquired any legal or ecclesiastical right to any particular or limited qualifications.

This was the accepted practice in Spain having legal force in 1898, when the Philippine Islands were transferred to the United States, and it is established by the fact that the Papal Bull "Apostólici Ministeri" of the Pontiff Inocencio XIII, dated May 13th, 1723, established a series of new rules expressly applicable to Spanish benefices and for the election of those who were to serve in them without any recognition of acquired rights to appointment.

This said Papal Bull, in article number one, says:

"First, the fathers of the aforesaid 'Concilio Tridentino' by divine inspiration, having very wisely recognized the great importance to the Christian State of the right selection of those to whom the sacred ministries are to be intrusted so that their lives may serve as a model to others of the faithful that they may take them for an example and, therefore, it having been determined by a proper resolution of the same fathers, that none should be admitted to the active clergy for the first tonsure except those of whom it might with probability be assumed that they had chosen this condition in life not merely with the intent of freeing

themselves from secular jurisdiction, but with the sincere spirit of giving themselves to the service of God, we desire that, for carrying into effect said sanction of the Council, none of the Archbishops and Bishops of the Kingdom of Spain shall admit, in future, for the first tonsure, any except those to whom an ecclesiastical benefice has to be conferred immediately, or to those of whom it is evident that they are engaged in studies, so that they appear to be already on the way to receive minor orders and later major orders; or, finally, to those they deem it advisable to delegate to the service and ministry of some church."

Article number two of said Papal Bull of 1723 further provides as follows:

"And likewise all those who desire to be advanced to the first tonsure, as also to minor orders, must keep the rule given therefor by the same Concilio Tridentino; that is to say, no one shall be ordained who may not be of use or necessary to its churches, *in the judgment of his bishop,* and, conjointly, that he shall not fail to be assigned to such churches or places of devotion for whose use or need he was ordained and where, for that purpose, he shall perform the functions proper to his office. But if there be found at present some of the tonsured, or those promoted to minor or major orders who may not be assigned to some specific church or place of devotion, the bishops may at once provide such assignment omitted by them, or by their predecessors, not only with respect to those ordained for major orders, even though they be presbyters, but also with respect to those having only the first tonsure, or minor orders, who also possess an ecclesiastical benefice; but for the rest who, as has been said, may be tonsured only, or have taken minor orders and without a benefice, those only shall be assigned whom they judge useful or necessary to their churches. Furthermore we permit that the fulfilment of said assignment may be delayed for a space of time that may seem convenient to the bishops themselves, with regard to those who, on account of their studies, either in a public

university or in private, or for other reasonable causes, approved or worthy of approval by the bishop, may be absent from such bishopric, wherein they were tonsured or ordained."

The above provisions were partly confirmed by the Concordat signed on March 16th, 1851, between the Holy See, Pontiff Pius IX, and the Queen of Spain. Article 4 of this Concordat reads as follows:

"In all the other cases that belong to the power and exercise of ecclesiastical authority and to the Ministry of Holy Orders, the Bishops and the clergy dependent thereon shall enjoy the full liberty established by the sacred canons."

And Article 43 adds:

"Everything else that pertains to persons or things ecclesiastical provided for in the foregoing article shall be directed and managed, pursuant to the discipline of the Church, as canonically in force."

There was a supplemental agreement between the Holy See and Spain, concerning the government of chaplaincies, which was enacted in Spain as a law on June 24th, 1867. This agreement provided in Article 17, referring to collative family chaplaincies as follows:

"These chaplaincies shall be provided for precisely within the canonical provisions. Minors of less than fourteen years shall not be appointed to fill them."

"Those appointed to the same shall continue the ecclesiastical career in a seminary, either as day pupils, or boarding pupils, or as the Head of the Diocese may order, according to the abundance or scarcity of means for that purpose; and likewise they shall, of necessity, be bound to holy orders, when they are of canonical age, under penalty, otherwise, of having the chaplaincy declared vacant."

"The Bishops of the Diocese shall decide on the obligations, studies and other requirements and qualifications, not expressed in the present Agreement, or in the instructions that must be given for its execution, using in such case the same apostolic power given in Articles 15 and 21."

Third: To what purposes would the income of the chaplaincy, in excess of the amount necessary for the saying of the masses ordered by the testatrix, have to be applied during the continuance of a vacancy in the chaplaincy?

In general, the proceeds of every ecclesiastical benefice should be received by the beneficiary who, in the first place, has to fulfill the obligations of such benefice and attend later to what the canonical law calls his "congrua"—that is, his reasonable sustenance; in other words the material needs or essentials of life of the chaplain.

The residue, if there be any, must be devoted by the beneficiary to pious uses. This follows from the canons of the Council of Trent and likewise particularly in and by Chapters 1 and 12 of the "Reformatione", Sections 23 and 24, respectively.

In case of the lack of a chaplain, or in case of non-acceptance of the appointment which the Bishop is free to make, there be surplus income of the chaplaincy, it accrues directly to the Church, and the latter may apply the surplus in pious uses, as it deems proper, after first complying with any specific direction, such as the saying of masses in the present case.

The following authorities may be cited in support of said proposition, namely, that any and all surplus income accruing during a vacancy in the chaplaincy from spiritual property of a collative chaplaincy and that, too, whether such chaplaincy be *colativa simple* or *gentilicia* on the one hand, or *colativa familiar* on the other hand, must be applied to pious uses, such, for example, as education.

Vechiotti: Inst. Canon., book three, chapter second, paragraph 12.

Juan Pedro Morales: Tratado de Derecho Eclesiastico General, volume iv, page 289 and following pages.

Finally, I have examined the record before the Supreme Court of the United States, No. 226, on writ of certiorari to the Supreme Court of the Philippine Islands, and, after many years of study of and practice under Spanish law, I certify my opinion that under Spanish law in force during

and prior to 1898, the civil or secular courts would not have had jurisdiction to compel a bishop to appoint a particular person chaplain of a collative chaplaincy irrespective of his canonical or ecclesiastic qualifications for such office, or to order and compel a bishop to pay to a private person, whether or not heir of a founder, any part of the income derived from property which had theretofore been duly converted into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction. The jurisdiction of the Church authorities would have been held to be ample and exclusive, there being no arbitrary abuse of ecclesiastical discretion and no repudiation or denial of the trust, according to the terms and express requirements of the documents establishing the collative chaplaincy.

ANTONIO S. DE BUSTAMANTE.

Havana, March 16th, 1929.

IV.

"THE CANONS AND DECREES OF THE COUNCIL OF TRENT" TRANSLATED BY REV. J. WATERWORTH (London, 1848).

Session VII, Decree on Reformation, Ch. XIII (Waterworth, p. 64):

"Persons presented, or elected, or nominated by any ecclesiastics soever, even by Nuncios of the Apostolic See, shall not be instituted, or confirmed in, or admitted to any ecclesiastical benefices whatsoever, even under the plea of any privilege soever, or custom, which may even have a prescription from time immemorial, unless they shall have been first examined, and found fit, by the Ordinaries of the places. And no one shall be able to screen himself, by means of an appeal, from being bound to undergo the examination. Those, however, are to be excepted, who are presented, elected, or nominated by universities, or by colleges for general studies."

Session XXIII, Decree on Reformation, Ch. IV (Waterworth, p. 179):

"None shall be initiated by the first tonsure, who have not received the sacrament of Confirmation; and who have not been taught the rudiments of the faith; and who do not know how to read and write; and in whose regard there is not a probable conjecture, that they have chosen this manner of life, that they may render unto God a faithful service, and not that they may fraudulently withdraw themselves from secular jurisdiction."

Session XXIII, Decree on Reformation, Ch. VI (Waterworth, p. 180):

"No one, after being initiated by the first tonsure, or even after being constituted in minor orders, shall be able to hold a benefice before his fourteenth year. Further, he shall not enjoy the privilege of the (ecclesiastical) court,

unless he have an ecclesiastical benefice, or, wearing the ecclesiastical dress and tonsure, he serves in some church by the bishop's order, or lives with the bishop's permission in an ecclesiastical seminary, or in some school, or university, on the way as it were to receive the greater orders. As regards married clerks, the constitution of Boniface VIII, which begins, *clerici qui cum unicis,* shall be observed; provided the said clerks, being deputed by the bishop to the service or ministry of some church, serve and minister therein, and wear the clerical dress and tonsure; no privilege or custom, even immemorial, availing any one herein."

Session XXIII, Decree on Reformation, Ch. VIII (Waterworth, p. 180):

"The holy Synod, adhering to the traces of the ancient canons, ordains, that when a bishop has arranged to hold an ordination, all who may wish to be received into the sacred ministry shall be summoned to the city, for the Thursday before the said ordination, or for such other day as the bishop shall think fit. And the bishop, calling to his assistance priests and other prudent persons, well skilled in divine law, and of experience in the constitution of the church, shall diligently investigate and examine the parentage, person, age, education, morals, learning, and faith of those who are to be ordained."

Session XXV, Decree on Reformation, Ch. V (Waterworth, p. 259):

"Reason requires, that, in regulations which have been well established, no alteration be made by any ordinances to the contrary. Whenever, therefore, by virtue of the erection or foundation of any benefices, or in consequence of other regulations, certain qualifications are required, or certain obligations are attached thereunto, they shall not be derogated from in the collation, or in any other arrangement whatsoever in regard of the said benefices. The same also shall be observed as to prebends assigned to teachers of theology, masters, doctors, priests, deacons, or subdeacons, whenever such prebends have been established in

this manner, in such sort that, in no provision whatever shall anything be altered in regard of the said qualifications and orders; and any provision made otherwise shall be accounted surreptitious."

Session XXV, Decree on Reformation, Ch. VII (Waterworth, p. 261):

"Whereas, as regards ecclesiastical benefices, whatsoever carries with it the appearance of hereditary succession is a thing odious to the sacred constitutions, and contrary to the decrees of the Fathers; no Access or Regress* in regard of any ecclesiastical benefice of whatsoever quality, shall, even though by consent, be henceforth granted to any individual; nor shall those already granted be suspended, extended or transferred. And this decree shall have effect in regard of all ecclesiastical benefices whatsoever, and even in cathedral churches, and as regards all manner of persons soever, even though distinguished with the honour of the cardinalate."

Session XXV, Decree on Reformation, Ch. IX (Waterworth, pp. 264-5):

"Even as it is not just to take away the legitimate rights of patronage, and to violate the pious intentions of the faithful in the institution thereof, so also neither is it to be suffered, that, under this pretext, ecclesiastical benefices be reduced to a state of servitude, as by many is impudently done."

"*Furthermore, it shall be lawful for the bishop to reject the persons whom the patrons have presented, if they be not fit.* But if the institution belongs to inferior (ecclesiastics), they (the presentees) shall nevertheless be examined by the bishop, pursuant to what has elsewhere been ordained by this Holy Synod; otherwise the institution made by those inferior shall be null and void."

---

* *Access*, right of accession to a benefice, at some future period; *Regress*, right of returning to a benefice vacated, in case of death, etc., of the actual incumbent.

V.

EXTRACTS FROM WRITERS ON CANON LAW.

SCHMALZGRUEBER, JUS ECCLESIASTICUM, SEU DECRETALIUM GREGORII IX, BOOK 2, PART 3, TITLE 26, PAR. 2, 29, INGOLDSTADT, 1712.

Latin.

"A Laicis praescribi non possunt *Jura Ecclesiastica,* et Spiritualia, e. g. jus eligendi, aut conferendi Beneficia Ecclesiastica, Jus cognoscendi, et judicandi causas Ecclesiasticas, et Clericorum et quia a Laicis possideri nequeunt c. causam 7. b. t. Hinc. etsi mille anni transierint, Laici ejusmodi Jura non praescribent. Jura, dixi; nam bona Ecclesiastica, quae Sacra non sunt, praescribi a Laicis possunt, sed indigent longiori tempore."

English.

Ecclesiastical and spiritual rights cannot be prescribed by laics, for example, the right to choose or to confer ecclesiastical benefices, the right to hear and judge ecclesiastical cases, or clerical, and because such rights cannot be possessed by laics. Hence even after a thousand years they cannot be prescribed by laics. I speak of rights; because ecclesiastical goods which are not sacred can be prescribed by laics but they need longer time.

WERNZ, "JUS DECRETALIUM" (Prati, 1915 Edition).

"*Personae instituendae* in officiis ecclesiasticis sunt solummodo illi, qui iam actu sunt *clerici.* Quare *laico* institutio collativa tituli *dari* non potest. Clericus autem in ordinibus *minoribus* constitutus et forte praesentatus ad officium ecclesiasticum, cui adnexus est ordo sacer, institutionis obtinendae incapax non est, dummodo alias sit idoneus et intra *annum* a die obtentae paci-

Only such persons as are already actually clerics may be instituted in ecclesiastical offices. Wherefore institution collative of title cannot be given to a laic. However a cleric ordained in minor orders and perchance presented for ecclesiastical office for which a sacred order is required is not incapable of institution if he be otherwise fitted and can be advanced to the order re-

Latin.

ficae possessionis officii computandum ad sacrum ordinem officio suo adnexem promoveri valeat. At legi speciali aut instrumento fundationis omnino standum est, si ordo ipso tempore *praesentationis* vel institutionis actu iam receptus expresse requiratur. Minime vero in ecclesiis vel officiis ecclesiasticis institui possunt clerici unius *originis* vel *nationis* aliis de iure exclusis, sed generatim instituendi sunt clerici litterati et idonei ex sanctionibus iuris communis, ex lege fundationis atque iure speciali, nisi in limine fundationis officium clericis tantum idoneis certarum familiarum vel regionum fuerit reservatum, aut Sedes Apostolica v. g. in concordatis singularia dederit privilegia vel consuetudines ratas habuerit.

"Denique in officio ecclesiastico nemo *seipsum* instituere potest; etenim ad vitandam speciem turpis ambitionis inter Praelatum instituentem et clericum institutum tanquam inter personam dantem et accipientem distinctio intercedat necesse est" (Vol. ii, p. 196).

English.

quired for his office within a year counting from the day of obtaining peaceful possession of the office. But a special law or instrument of the foundation must prevail if the order be required at the very time of presentation or institution. On no account can clerics of a given origin or nation be instituted in churches or ecclesiastical offices to the lawful exclusion of others, but in general clerics who are lettered and filled according to the sanctions of common law, the law governing the foundation and special law unless by the provision of the foundation the office be reserved for deserving clerics of certain families or places, or the Apostolic See by concordats, for instance, may have given special privileges or approved established customs.

Finally no one can institute himself in an ecclesiastical office since to avoid the appearance of the torpitude of ambition it is essential that there should be between the instituting Prelate and the instituted cleric the distinction in person of giver and recipient.

Latin.	English.
"Similiter reductio onerum fundationis pro *tempore praeterito*, quae potius remissio vel condonatio vel absolutio dicitur, soli Sedi Apostolicae est reservata. Quae absolutio a Romano Pontifice concedi tantum solet, si *aequa causa* subest v. g. paupertas et egestas legatarii, et insuper *bona fides* adfuit, atque reditus non desunt, quibus praeteritae omissiones suppleri possint" (vol. iii, num. 207).	Similarly, the reduction of the charges of the foundation for time past, which more properly is denominated remission, condonation or absolution, is reserved solely to the Apostolic See. This absolution is usually given only by the Roman Pontiff upon just cause, i. e. the poverty or necessity of the legatee, and moreover if there was good faith and there are rents available with which to supply past omissions.

"THE LAW OF THE CHURCH" BY ETHELRED TAUNTON, PRIEST OF THE ARCHDIOCESE OF WESTMINSTER (London, 1906).

A cyclopaedia of canon law for English-speaking countries.

"A benefice is a perpetual right, established by the authority of the Church, of receiving, on account of some spiritual office, an income which comes from ecclesiastical property" (p. 70).

"The spiritual offices are such as: to celebrate Mass, administer the Sacraments, preach the word of God, recite the Divine Office, etc.

"The benefice consists in the right to the income, not to the capital, which remains under the *dominium* of the Church. Hence the holder of a benefice has a direct *dominium* over the income or *fructus*, and, although he may have private means, he can use it to provide the expenses of living in that manner which is considered honest and fitting. If anything remains over and above this, the holder is bound to devote the superfluities of this benefice to the poor or to other pious uses" (p. 71).

"Benefices are collative, or patronal, or elective. A collative benefice is one that is conferred at the absolute and free will of the prelate. A patronal benefice is one that is conferred by the prelate on the presentation of the patron. An elective benefice is one requiring free election, on the part of those who possess the right to elect, and also confirmation on the part of the prelate" (p. 71).

"The Pope, *de iure communi,* has the fulness of power to collate any and every benefice throughout the Church; for he is the supreme administrator of the goods offered to God, and all laws regulating benefices, even those recognizing the rights and privileges of benefactors, receive their force from him and are to be understood as being liable to suspension should he consider that the common good of the Church so demands. But the Roman Pontiffs are otherwise not wont to use the *summum ius,* except in cases where it may be necessary to preserve or to enforce a right inherent, *de iure communi,* in the Primacy; for they are not unmindful that the exercise of the *summum ius* is often *summa iniuria*" (p. 72).

"The Church requires certain things as regards holders of benefices.

(1) Legitimate birth. . . .

(2) The tonsure; for a laic is incapable of exercising the spiritual office which is attached to the benefice.

(3) The order that is required by law or custom for a particular benefice; but custom allows the order to be received within a year of obtaining the benefice.

(4) A fixed age, which varies according to the benefice . . . 14 (begun) for a simple benefice.

(5) Immunity from censures and occult irregularities.

(6) The knowledge necessary for the office.

(7) Probity of morals.

(8) The observances of approved local customs which sometimes demand other requirements.

"If any of the *requirenda* are wanting, the collation is thereby invalidated" (p. 73).

"He (the holder of a benefice) is bound under mortal sin to pay any pensions lawfully imposed upon his benefice. He is bound to spend upon pious works the superfluities of his benefice, after his honest sustenance is provided" (p. 76).

"He (the chaplain) is bound *per seipsum* to celebrate the masses if it be expressed in the foundation in so many words or equivalently. For the Council of Trent orders that what is constituted and laid down in the erection of the chaplaincy is *omnino* to be observed" (p. 149).

"The bishop or the heirs of the founder cannot add in any way to or change the founder's will" (p. 150).

"The Council of Trent orders that what is constituted and laid down in the erection of the chaplaincy is *omnino* to be observed" (p. 149).

"A chaplaincy is a certain sacred office to be performed, with a certain income attached as retribution . . . we have

(1) *Cappelania collativa,* which consists in an endowment, without reservation, for Masses daily at a particular altar; or for a certain number of Masses every year. This chaplaincy has to be erected by the bishop, and then becomes a benefice, and the collation belongs to the bishop. This kind of chaplaincy confers a title.

(2) *Capellania iuris patronatus* or *gentilitia* is like the former, but it is reserved to the patron to nominate the chaplain, while the institution belongs to the bishop. The founder cannot make any condition which will interfere with the bishop's right of institution" (pp. 150-151).

"Christian Doctrine is the Word of God revealed by Jesus Christ to the Church and received by her in all its fulness, guarded by her in all its integrity, and taught by

her through the bishops in communion with the Pope . . ." (p. 181).

"The First Provincial Council of Westminster decreed:

(1) 'In these schools (parochial) the Christian Doctrine, that is the Catechism duly approved, should be taught to all Catholic children . . .' " (p. 183).

THE CATHOLIC ENCYCLOPEDIA (New York, 1907).

BENEFICE (Lat. Beneficium, a benefit) (Cath. Encyc., vol. ii, p. 473).

"Popularly the term benefice is often understood to denote either certain property destined for the support of ministers of religion, or a spiritual office or function, such as the care of souls, but in the strict sense it signifies a right, i. e. the right given permanently by the Church to a cleric to receive ecclesiastical revenues on account of the performance of some spiritual service. Four characteristics are essential to every benefice: (a) the right to revenue from church property, the beneficed cleric being the usufructuary and not the proprietor of the source of his support; (b) a twofold perpetuity, objective and subjective, inasmuch as the source of income must be permanently established and at the same time the appointment to the benefice must be for life, and not subject to revocation, save for the causes and in the cases specified by law; (c) a formal decree of ecclesiastical authority giving to certain funds or property the character or title of a benefice; (d) an annexed office or spiritual function of some kind, such as the care of souls, the exercise of jurisdiction, the celebration of Mass or the recitation of the Divine Office. This last mentioned element is fundamental, since a benefice exists only for the sake of securing the performance of duties connected with the worship of God, and is based on the Scriptural teaching that they who serve the altar should live by the altar. In fact, as Innocent III declares, the sole purpose of the foundation of benefices was to enable

the church to have at her command clerics who might devote themselves freely to works of religion."

Division (p. 474)—"Benefices are divided into simple and double; major and minor; elective, presentative, and collative; residential and nonresidential; perpetual and manual; secular and regular. Simple benefices are those which involve only the duty of reciting the Divine Office or of celebrating Mass. Double benefices imply the care of souls or jurisdiction in the external forum or administrative functions, and, if they be episcopal or supra-episcopal in rank, are styled major benefices. A benefice is elective when the appointing authority may collate only after some electoral body has named the future incumbent; presentative when such nomination belongs to a patron; collative when the bishop or other superior appoints independently of any election or presentation. The distinction between residential and non-residential benefices is based upon the fact that in some cases the canons or articles of foundation impose the obligation of residence in the locality of the benefice while in other cases no such obligation is annexed. Manual benefices are not benefices in the strict sense, since their distinctive note is that appointments to them are revocable at the will of the collating authority. A legal presumption exists that all benefices are secular, but those which exist in churches or houses of religious orders or which by custom or by the will of the founder have been appropriated to religious are known as regular benefices. This last distinction has at times a special importance because of the rule requiring that secular benefices be conferred only on secular clerics, regular benefices only on regulars.

"Creation.—Benefices can be created only by ecclesiastical authority, since the right to revenue which they suppose is always necessarily connected with some spiritual function, and is therefore reckoned among the *jura spiritualia* controlled by the Church. The competent authority may be the pope or a bishop or one possessing

quasi-episcopal authority, it being always understood that the pope has exclusive control of all major benefices. A benefice must be erected in a church or at an altar, under the title of some saint or mystery, and with the annexed obligation of rendering some spiritual service. Since the idea of compensation is always implied, a sufficient endowment must in every case be guaranteed, the amount varying with the character of the benefice, the locality of the foundation, and the nature of the services which are to be rendered. In some countries, as in Austria, the consent of the civil authorities is a necessary preliminary to the creation of a benefice."

COLLATION (p. 475).—"The collation or granting of benefices may be ordinary or extraordinary, free or necessary. . . . A collation, whether made by the pope or by a bishop, is said to be free when it is not conditioned by any act of an elector or of a patron; necessary when it follows election or nomination by competent persons or presentation by patrons. In many countries, concordats have secured to the representatives of civil authority an important part in appointments to benefices. Thus in Bavaria the king nominates to all archiepiscopal and episcopal sees; and a similar right has been granted to the Emperor of Austria and to the King of Portugal; in Hanover the chapter, before proceeding to the election of a bishop, must allow the Government to cancel the names of those candidates whom it judges unacceptable. Secular intervention in the collation of minor benefices varies from the royal nomination of the King of Portugal to the governmental exequatur required by Italian law. *The interests of religion are safeguarded by the canonical requirement that in every case the candidate must be confirmed by ecclesiastical authority before he can lawfully begin his incumbency.*

"CONDITION OF COLLATION.—In order that benefices may the more effectually fulfill the purposes for which they were instituted, various laws have been enacted governing the act of collation. Whether the collation be free or necessary

it must always be gratuitous, to avoid simony; free, that is without coaction; unconditional; public, so that it may be readily proved; and granted within six months from the date of vacancy. Moreover no benefice can be conferred before it is vacant, nor can seculars receive the benefices of regulars, nor regulars those which are secular in character. Plurality of benefices also is forbidden. This last regulation was introduced very early in the history of benefices to assure the faithful execution of the trust attached to ecclesiastical foundations, as well as to guard against the evils which follow luxury; but in the course of time its effectiveness was considerably diminished by a distinction drawn between compatible and incompatible benefices. It was claimed that a benefice which does not require residence is perfectly compatible with one which does, and also that several simple benefices might very properly be held at the same time. This view held sway down to the time of the Council of Trent, which ordained that the possession of more than one benefice is lawful only when the first benefice obtained does not suffice for the support of the incumbent, and that in no case should both be residential. The Holy See alone can dispense from the observance of this law. The act of collation is further conditioned by canons requiring certain qualities in the appointee: (a) *The clerical state and celibacy.*—Tonsure is necessary for all benefices, and higher orders must be received by aspirants to important charges; thus cardinals are obliged to receive within the year the order corresponding to their rank in the sacred college; archbishops and bishops must have been subdeacons for at least six months; parish priests must receive the priesthood within a year. (b) *Age.* Before the Council of Trent a simple benefice could lawfully be conferred on a cleric as early as his seventh year, but since that council the recipient of a simple benefice must be in his fourteenth year, and for double benefices the age of twenty-four years completed is always required. A greater maturity is demanded for certain offices, e. g., thirty

years completed for the episcopate, and forty years for the post of canon penitentiary. (c) *Character.*—The appointee must be of legitimate birth and of good reputation, and free from censure and irregularity. (d) *Relative worthiness.*—In the case of a choice between several candidates for a bishopric or for a parish, the collator must appoint the most worthy, i. e., the one who possesses in the highest degree the qualities necessary for a successful discharge of the duties connected with the benefice in question. The same rule applies to prelacies with quasiepiscopal jurisdiction, to the canon theologian and to the canon penitentiary. As to other benefices authorities differ, the preferable opinion maintaining that in all cases the most worthy is to be chosen. (e) *Science.*—According to a law of Trent (Sess. VII, c. xiii, De ref.) no one can be collated to a benefice unless his fitness has been demonstrated in an examination conducted by the ordinary. In the case of parochial benefices, this examination must take the form of a concursus. (See Concursus.) For some appointments the possession of a degree in theology or in canon law is demanded, as evidence of requisite learning; a bishop must be a doctor or a licentiate in canon law or in theology, or have the public testimony of a university as to his fitness to teach others; an archdeacon also must be a doctor or a licentiate in canon law or in theology; and similar qualifications are demanded for other offices. The Holy See, is, at the present time, insisting that the law concerning degrees be faithfully observed. (f) *Extraordinary requirements.*—These may be imposed by the articles of foundation or by secular law. Founders of benefices are given a great deal of liberty in attaching conditions to the act of collation, provided that these conditions be approved by ecclesiastical authority. In consequence, it happens at times that only members of a certain family or citizens of some town or city are eligible, or even, in some few instances, persons of noble birth. . . ."

VACANCY (p. 476).—"The tenure of the incumbent of a benefice is perpetual, in the sense that it can be terminated

only by death or for causes specified in the law. It is provided in the law that in the event of certain acts vacancy shall occur *ipso facto;* as when the incumbent marries or attempts marriage, when he takes solemn vows in a religious order, when he violates the canon forbidding plurality, when he fails to receive within the prescribed time the necessary ordination, when he obtains episcopal consecration, when he is guilty of any crime to which penalty of deprivation is expressly attached. In other cases deprivation follows a judicial process, instituted in virtue of laws authorizing the bishop to punish certain offences in this manner. Moreover a cleric has the right to resign his benefice provided the resignation be offered freely and for just reasons, and be accepted by a competent superior, and he may also, with certain conditions, exchange benefices with another incumbent.

"Revenues.—The holder of a benefice is not the owner of the foundation from which he derives his support; he occupies in reference to it the position of a tutor or guardian who must defend its interests. His chief duty is to maintain it as a perpetual means of support for ministers of religion. Its fruits or revenues, however, belong to him, but with the obligation of devoting to pious causes, and especially to the relief of the poor, all that is not needed for his own support. Formerly, this superfluous revenue could not be disposed of by will, but a universal custom has long since authorized such testamentary disposal, provided it be made in favour of pious causes or of the poor. In fact, in most places on account of the difficulty of distinguishing a cleric's patrimonial property from his beneficiary revenue, the right is recognized to dispose freely by will of all property."

Beneficed Chaplains (Cath. Encyc., vol. iii, p. 580).

"There are a large number of clerics whose duty it is to say certain prescribed Masses or to procure their celebration, or to take part in various church services, such as choir service. Such persons receive their support from

a pious foundation erected for the purpose. Such chaplaincies are called either ecclesiastical or lay. They are ecclesiastical if the property donated by a founder has been formally erected into a benefice by the proper spiritual authority. If, however, the property designed for the purpose of procuring certain acts of Divine service has not received ecclesiastical erection it is called a lay chaplaincy. The latter is, strictly speaking, not a benefice in the canonical sense of the term. When a founder erects a chaplaincy, he is at liberty to define the duties of the person who is to enjoy the benefit of his foundation. Thus he may prescribe that a certain number of Masses be said by the chaplain; he may designate the intention for which they are to be offered, the altar at which they are to be said, and other like prescriptions. He can also determine whether the chaplain is to say the Masses personally or only be responsible for their due celebration. The Church has always been most liberal in confirming the conditions prescribed by such founders and insisting on their due observance. If the testator has left his goods to a layman, with the obligation of procuring the celebration of certain Masses by any priest whom he shall choose, such chaplaincy is called mercenary, and it does not partake of the nature of an ecclesiastical benefice, as the latter requires generally that the holder should be appointed for life. The controllers of such mercenary chaplaincies can of course be laymen, or even women or children. At times the name of lay chaplains is given to such persons. A chaplaincy is called collative if the founder bestows his goods for spiritual purposes in such a way that the bishop is to erect the foundation into a benefice, for no layman can erect a sacred edifice or institute a spiritual office without the episcopal authorization. Such benefices are called collative because the bishop collates or confers the right to hold them upon the acceptable candidate, even if such candidate has been presented or nominated by lay authority. To exclude the episcopal confirmation would be to make it impossible for the chaplaincy to be held as an ecclesiastical benefice.

Hereditary or family chaplancies are those to which, by the will of the founder, the holder of the benefice is to be nominated by the testator's heirs or assigns. *In such cases also the confirmation of the bishop is of absolute necessity.* If the chaplaincy be attached to a definite edifice or to an altar in that edifice, it may not by common law be removed to another place. Instances, however, are on record where the Holy See has sanctioned the removal of such chaplaincies from one castle of a noble family to another, where the request has been made by the heirs of the founders.

"REGULATIONS CONCERNING BENEFICED CHAPLAINS. When the founder of a chaplaincy has not expressly stipulated that the beneficiary is to celebrate personally the prescribed Masses, it is not requisite that the chaplain be in Sacred orders, as he can procure otherwise the celebration of the Masses. *If it be an ecclesiastical benefice, however, the incumbent must at least be a cleric.* When the founder explicitly stipulates that the chaplain is to be a priest, this condition must be adhered to. If, however, he says merely that the chaplain is personally to celebrate the stipulated Masses, then the benefice can be given to a simple cleric, provided he is of such age that he can receive the priesthood within a year. If the foundation requires that the chaplain take part in the Divine Office in a cathedral or collegiate church, then personal service is obligatory on the beneficiary, nor can he employ a substitute, if by obtaining the benefice he becomes a mansionary of that church. In cases where a daily Mass is one of the conditions of the foundation, it is generally held that the chaplain can occasionally intermit this duty for a proper cause. He can also, if hindered by sickness, omit the application of the daily Mass for a fortnight, without being obliged to secure the fulfilment of the foundation requirement by another priest. If the chaplain is obliged to offer his Mass for a definite intention specified by the founder, he may not receive an alms for another intention and satisfy both by the same

Mass. As to residence, the chaplain is only bound to observe it when local ecclesiastical regulations, or customs, or the will of the founder has imposed it as a duty. The bishop cannot impose on a chaplain any care of souls that will interfere with his peculiar obligations. The duration of the chaplain's office depends on whether his chaplaincy be lay or clerical; if lay, he may be arbitrarily removed by the one who has the right of appointment, unless the will of the founder be expressly to the contrary; if clerical, the chaplain, like all other holders of benefices, is presumably appointed for life, unless the laws of foundation provide otherwise."

CLERIC (Cath. Encyc., vol. iv., p. 49).

"Cleric, a person who has been legitimately received into the ranks of the clergy. By clergy in the strict sense is meant the entire ecclesiastical hierarchy. Consequently a cleric is one who belongs in some sense to the hierarchy. For this it is necessary that he have received at least the tonsure (see Tonsure). The clergy by Divine right form an order or state which is essentially distinct from that of the laity."

DISCIPLINE (Cath. Encyc., vol. v., p. 30).

"DISCIPLINE, ECCLESIASTICAL.—Etymologically the word *discipline* signifies the formation of one who places himself at school and under the direction of a master. All Christians are the disciples of Christ, desirous to form themselves at His school and to be guided by His teachings and precepts. He called Himself, and we, too, call Him, Our Master. Such, then, is evangelical discipline. However, in ecclesiastical language the word *discipline* has been invested with various meanings, which must here be enumerated and specified.

"I. MEANING OF DISCIPLINE.—All discipline may be considered first in its author, then in its subject, and finally in itself. In its author it is chiefly the method employed for the formation and adaptation of the precepts and directions to the end to be attained, which is the perfect conduct

of subjects; in this sense discipline is said to be severe or mild. In those who receive it discipline is the more or less perfect conformity of acts to the directions and formation received; it is in this sense that discipline may be said to flourish in a monastery. Or, again, it is the obligation of subjects to conform their acts to precepts and directions, and is thus defined by Cardinal Cavagnis: *Praxis factorum fidei consona*—'conduct conforming itself to faith' (Inst. jur. publ. eccl., Bk. IV, n. 147). More frequently, however, discipline is considered objectively, that is, as being the precepts and measures for the practical guidance of subjects. Thus understood ecclesiastical discipline is the aggregate of laws and directions given by the Church to the faithful for their conduct both private and public. This is discipline in its widest acceptation, and includes natural and Divine as well as positive laws, and faith, worship, and morals; in a word, all that affects the conduct of Christians. But if we eliminate laws merely formulated by the Church as the exponent of natural or Divine law, there remain the laws and directions laid down and formulated by ecclesiastical authority for the guidance of the faithful; this is the restricted and more usual acceptation of the word *discipline*. Nevertheless, it must be understood that this distinction, however justified, is not made for the purpose of separating ecclesiastical laws into two clearly divided categories in so far as practice is concerned; the Church does not always make known to what extent she speaks in the name of natural or of Divine law, and with this corresponds the observance of laws by her subjects.

"II. Object of Discipline.—Since ecclesiastical discipline should direct every Christian life, its object must differ according to the obligations incumbent on each individual. The first duty of a Christian is to believe; hence dogmatic discipline, by which the Church proposes what we should believe and so regulates our conduct that it shall not fail to assist our faith. Dogmatic discipline springs from the power of *magisterium*, i. e. the teaching office, in the

exercise of which power the Church can proceed only by declaration; therefore, it is ecclesiastical discipline only in a broad sense. The second duty of Christians is to observe the Commandments, hence moral discipline (*disciplina morum*). Strictly understood the latter does not depend much more upon the Church than does dogmatic discipline, as the natural law is anterior and superior to ecclesiastical law; however, the Church authoritatively proposes to us the moral law, she specifies and perfects it; hence it is that we generally call moral discipline whatsoever directs the Christian in those acts that have a moral value, including the observance of positive laws, both ecclesiastical and secular. Among the chief duties of a Christian the worship of God must be assigned a place apart. The rules to be observed in this worship, especially public worship, constitute liturgical discipline. This cannot be said to depend absolutely upon the Church, as it derives the essential part of the Holy Sacrifice and the sacraments from Jesus Christ; however, for the greater part, liturgical discipline has been regulated by the Church and includes the rites of the Holy Sacrifice, the administration of the sacraments and of the sacramentals, and other ceremonies.

"There still remain the obligations incumbent on the faithful considered individually, either on the members of different groups or classes of ecclesiastical society, or, finally, on those who are to any extent whatever depositaries of a portion of the authority. This is discipline properly so called, exterior discipline, established by the free legislation of the Church (not, of course, in a way absolutely independent of natural or Divine law, but outside of, yet akin to this law) for the good government of society and the sanctification of individuals. On individuals it imposes common precepts (the Commandments of the Church); then it states their mutual obligations, in conjugal society by matrimonial discipline, in larger societies by determining relations with ecclesiastical superiors, parish priests, bishops, etc. Special classes also have their own particu-

lar discipline, there being clerical discipline for the clergy and religious or monastic discipline for the religious. The government of Christian society is in the hands of prelates and superiors who are subject to a special discipline either for the conditions of their recruitment, for the determining of their privileges and duties, or for the manner in which they should fulfil their functions. We may include here the rules for the administration of temporal goods. Finally, any authority from which emanate orders or prohibitions should have power to ratify the same by penal measures applicable to all transgressors; hence, another object of discipline is the imposing and inflicting of disciplinary sanctions. It must be noted, however, that the object of these measures is to ensure observance or to chastise infractions of the natural and Divine as well as of ecclesiastical laws.

"III. Disciplinary Power of the Church—It is evident, therefore, that the disciplinary power of the Church is a phase, a practical application, of its power of jurisdiction, and includes the various forms of the latter, namely, legislative, administrative, judicial, and coercive power. As for the power of order (*potestas ordinis*), it is the basis of liturgical discipline by which its exercise is regulated. For the proof that the Church is a society and that, as such, it necessarily has the power of jurisdiction which it derives from Divine institution through the Apostolic succession, see Church. Disciplinary power is proved by the very fact of its exercise; it is an organic necessity in every society whose members it guides to their end by providing them with rules of action. Historically it can be shown that a disciplinary power has been exercised by the Church uninterruptedly, first by the Apostles and then by their successors. The Apostles in the first council at Jerusalem formulated rules for the conduct of the faithful (Acts, xv). St. Paul gave moral advice to the Christians of Corinth on virginity, marriage, and the agape (I Cor., vii, xi). The Pastoral Epistles of St. Paul are a veritable code of clerical discipline. The Church, moreover, has never ceased to rep-

resent herself as charged by Christ with the guidance of mankind in the way of eternal salvation. The Council of Trent expressly affirms the disciplinary power of the Church in all that concerns liturgical discipline and Divine worship (Sess. XXI, c. ii): 'In the administration of the sacraments, the substance of the latter remaining intact, the Church has always had power to establish or to modify whatever she considered most expedient for the utility of those who receive them, or best calculated to ensure respect for the sacraments themselves according to the various circumstances of time and place.' In fact, we need only to recall the numerous laws enacted by the Church in the course of centuries for the maintenance, development, or restoration of the moral and spiritual life of Christians.

"IV. Mutability of Discipline.—That ecclesiastical discipline should be subject to change is natural since it was made for men and by men. To claim that it is immutable would render the attainment of its end utterly impossible, since, in order to form and direct Christians, it must adapt itself to the variable circumstances of time and place, conditions of life, customs of peoples and races, being, in a certain sense, like St. Paul, all things to all men. Nevertheless, neither the actual changes nor the possibility of further alteration must be exaggerated. There is no change in those disciplinary measures through which the Church sets before the faithful and confirms the natural and the Divine law, nor in those strictly disciplinary regulations that are closely related to the natural or Divine law. Other disciplinary rules may and must be modified in proportion as they seem less efficacious for the social or individual welfare. Thomassin aptly says [Vetus et nova Ecclesiae disciplina (ed. Lyons, 1706), preface, n. xvii]: 'Whoever has the least idea of ecclesiastical laws, those that concern government as well as those that regulate morals, knows well that they are of two kinds. Some represent immutable rules of eternal truth, itself the fundamental law, the source and origin of these laws, from the

observance of which there is no dispensation, against which no prescription obtains, and which are not modified either by diversity of custom or vicissitudes of time. Other ecclesiastical rules and customs are by nature temporary, indifferent in themselves, more or less authoritative, useful, or necessary according to circumstances of time and place, having been established only to facilitate the observance of the fundamental and eternal law.' As to the variations of discipline concerning these secondary laws, the same author describes them in these terms (loc. cit., n. xv): 'While the Faith of the Church remains the same in all ages, it is not so with her discipline. This changes with time, grows old with the years, is rejuvenated, is subject to growth and decay. Though in its early days admirably vigorous, with time defects crept in. Later it overcame these defects and although along some lines its usefulness increased, in other ways its first splendour waned. That in its old age it languishes is evident from the leniency and indulgence which now seem absolutely necessary. However, all things fairly considered, it will appear that old age and youth have each their defects and good qualities.' Were it necessary to exemplify the mutability of ecclesiastical discipline it would be perplexing indeed to make a choice. The ancient catechumenate exists only in a few rites; the Latin Church no longer gives Communion to the laity under two kinds; the discipline relating to penance and indulgences has undergone a profound evolution; matrimonial law is still subject to modifications; fasting is not what it formerly was; the use of censures in penal law is but the shadow of what it was in the Middle Ages. Many other examples will easily occur to the mind of the well-informed reader."

Doctrine (Cath. Encyc., vol. v., p. 75).

Doctrine, Christian.—"Taken in the sense of 'the act of teaching' and 'the knowledge imparted by teaching', this term is synonymous with Catechesis and Catechism" (p. 75).

"The subjects to be treated of are laid down by Pius X: 'As the things divinely revealed are so many and so various that it is no easy task either to acquire a knowledge of them, or, having acquired that knowledge, to retain them in the memory, . . . our predecessors have very wisely reduced this whole force and scheme of saving doctrine to these four distinct heads: the Apostles' Creed, the Sacraments; the Ten Commandments; and the Lord's Prayer. In the doctrine of the Creed are contained all things which are to be held according to the discipline of the Christian Faith, whether they regard the knowledge of God, or the creation and government of the world, or the redemption of the human race, or the rewards of the good and the punishments of the wicked. The doctrine of the Seven Sacraments comprehends the signs and as it were the instruments for obtaining divine grace. In the Decalogue is laid down whatever has reference to the Law, "the end" whereof "is charity". Finally, in the Lord's Prayer is contained whatever can be desired, hoped, or salutarily prayed for [illegible] men. It follows that these four commonplaces, as it were [illegible], of Sacred Scripture being explained, there can scarcely be wanting anything to be learned by a Christian man' (ib., xii). It must be borne in mind that catechetical instruction should be elementary; but this of course is a relative term, according as the pupil is an adult or a child. This difference has been dealt with above in speaking of the persons concerned in catechizing. It may be pointed out here, however, that elementary knowledge is not the same as partial knowledge. Even young children should be taught something of each of the four divisions mentioned above, viz., that they have to believe in God and to do God's will, and to obtain His grace by means of prayer and the sacraments. Further instruction will consist in developing each of these heads. Besides what is ordinarily understood by Christian doctrine, catechizing would treat of Christian history and Christian worship. Christian history will include the story of the Old Testament, the New Testament and the

Church. Christian worship will include the Church's calendar (the feasts and fasts) and her services and devotions. These three—doctrine, history, and worship—are not altogether distinct, and may often be best taught together. For example, the second article of the Creed should be taught in such a way as to bring out the doctrine of the Incarnation, the beautiful story of Christ's birth and childhood, and the meaning and the services of Advent and Christmas. The Bible history and the history of the Church will afford countless instances bearing on the various doctrines and heresies of the doctrinal part of the catechism, and the virtues and contrary vices of the practical part" (pp. 83-4).

ORDERS, HOLY (Cath. Encyc., vol. xi., p. 279).

"Order is the appropriate disposition of things equal and unequal, by giving each its proper place (St. Aug., 'De civ. Dei,' XIX, xiii). Order primarily means a relation. It is used to designate that on which the relation is founded and thus generally means rank (St. Thom., 'Suppl.', Q. xxxiv, a. 2, ad 4um). In this sense it was applied to clergy and laity (St. Jer., 'In Isaiam', XIX, 18; St. Greg. the Great, 'Moral.', XXXII, xx). The meaning was restricted later to the hierarchy as a whole or to the various ranks of the clergy. Tertullian and some early writers had already used the word in that sense, but generally with a qualifying adjective (Tert., 'De exhort. cast.', vii, ordo sacerdotalis, ordo ecclesiasticus; St. Greg. of Tours, 'Vit. patr.', X, i, ordo clericorum). Order is used to signify not only the particular rank or general status of the clergy, but also the outward action by which they are raised to that status, and thus stands for ordination. It also indicates what differentiates laity from clergy or the various ranks of the clergy, and thus means spiritual power. The Sacrament of Order is the sacrament by which grace and spiritual power for the discharge of ecclesiastical offices are conferred."

TONSURE (Cath. Encyc., vol. xiv., p. 779).

"Tonsure (Lat. *tondere*, 'to shear'), a sacred rite instituted by the Church by which a baptized and confirmed

Christian is received into the clerical order by the shearing of his hair and the investment with the surplice. The person thus tonsured becomes a partaker of the common privileges and obligations of the clerical state and is prepared for the reception of orders. The tonsure itself is not an ordination properly so called, nor a true order. It is rather a simple ascription of a person to the Divine service in such things as are common to all clerics. Historically, the tonsure was not in use in the primitive Church during the age of persecution. Even later, St. Jerome (in Ezech., xliv) disapproves of clerics shaving their heads. Indeed, among the Greeks and Romans such a custom was a badge of slavery. On this very account, the shaving of the head was adopted by the monks. Towards the end of the fifth, or beginning of the sixth century, the custom passed over to the secular clergy.

"As a sacred rite, the tonsure was originally joined to the first ordination received, as in the Greek Church it still is to the order of lector. In the Latin Church it began as a separate ceremony about the end of the seventh century, when parents offered their young sons to the service of God. Tonsure is to be given by a candidate's ordinary, though mitred abbots can bestow it on their own subjects. No special age for its reception is prescribed, but the recipient must have learnt the rudiments of the Faith and be able to read and write. The ceremony may be performed at any time or place. As to the monastic tonsure, some writers have distinguished three kinds: (1) the Roman, or that of St. Peter, when all the head is shaved except a circle of hair; (2) the Eastern, or St. Paul's, when the entire head is denuded of hair; (3) the Celtic, or St. John's, when only a crescent of hair is shaved from the front of the head. In Britain, the Saxon opponents of the Celtic tonsure called it the tonsure of Simon Magus. According to canon law, all clerics are bound to wear the tonsure under certain penalties. But on this subject, Taunton (loc. cit. inf.) says: 'In English-speaking countries, from a cus-

tom arising in the days of persecution and having a prescription of over three centuries, the shaving of the head, the priestly crown, seems, with the tacit consent of the Holy See, to have passed out of use. No provincial or national council has ordered it, even when treating of clerical dress; and the Holy See has not inserted the law when correcting the decrees of those councils'."

THE NEW SCHAFF-HERZOG ENCYCLOPEDIA OF RELIGIOUS KNOWLEDGE

Article on "BENEFICE", vol. ii, (1908), p. 51, by E. Friedberg, Professor of Ecclesiastical Law, University of Leipsic.

"The conditions of a proper canonical appointment to a benefice are several: (1) A vacancy must exist, and that a real one, not such as would be caused by the forcible expulsion of the incumbent. Thus expectancies are forbidden; . . . (2) The person appointed must be a *persona regularis* and *idonea*, i. e., properly qualified to hold the benefice. Under this head comes the possession of the qualifications necessary for ordination, though where it is required, a delay of a year or other specified time may be granted. Intellectual qualifications are included, to be determined, according to the Council of Trent, by examination; and the law has sometimes required native birth also, other things being equal. (3) The appointment must be made within the legal time, the rule being that no benefice shall remain vacant more than six months; otherwise, the right of presentation is lost. . . . (4) There must be no simony involved. (5) What are called subreption and obreption are also forbidden. . . . (6) The proper forms, both in the designation and in the collation, must be observed. . . ."

Article on "ROMAN CATHOLICS", vol. x (1911), p. 70, by Charles H. McCarthy, Professor, Catholic University, Washington, D. C.

"DOCTRINE: The Roman Catholic system of Doctrine is contained* in the ecumenical creeds (the Apostles', the

* It will be noted that the above was published before the promulgation of the Codex Juris Canonici of 1917.

Nicene with the *Filioque,* and the Athanasian . . .), in the dogmatic decisions of the ecumenical councils (twenty in number, from 325 to 1870), and in *ex cathedra* deliverances of the popes. The principal authorities are the canons and decrees of the council of Trent . . ., the Profession of the Tridentine Faith, commonly called the 'Creed of Pius IV.', . . . The Roman Catechism (1566), the decree of the immaculate conception (1854), and the Vatican decrees on the Catholic faith and the infallibility of the pope (1870). A thesaurus of decisions on all sorts of doctrinal and disciplinary questions is afforded in the books of the canon law, beginning with the 'Concordance' of Evatian (c. 1150), but this has never been pronounced as a final authority. The best summary of the leading articles of the Roman faith is contained in the Creed of Pius IV., which is binding upon all priests and public teachers, and which must be confessed by all converts. It consists of the Nicene Creed and eleven articles. To these must now be added the two additional Vatican dogmas of the Immaculate Conception . . . of the Virgin Mary and the Infallibility of the Pope. . . . The Roman Catholic system of doctrine was prepared as to matter by the Fathers (especially Irenaeus, Cyprian, Augustine, Jerome, Leo I., Gregory I. . . .), logically analyzed, defined and defended by the mediaeval schoolmen (Anselm, Alexander Hales, Peter the Lombard, Thomas Aquinas, Duns Scotus . . .), and vindicated, in opposition to Protestantism, by Bellarmin, Bossuet, and Möhler . . . and completed in the Vatican dogma of papal infallibility, which excludes all possibility of doctrinal reformation."

"AN OUTLINE OF CHRISTIAN THEOLOGY", BY W. N. CLARKE, D.D., PROFESSOR OF CHRISTIAN THEOLOGY IN COLGATE UNIVERSITY (New York, 1914).

"The main work of a department of Christian theology is to present the Christian doctrine, grounded in the Scriptures, in the form to which historical development has brought it, and to study the facts of religion in the light of the Christian revelation. Among the many views that may be taken of God and man, good and evil, duty, life and

destiny, there is a Christian view, obtained mainly by means of Christ; and Christian Theology aims to present that view in systematic order and proportion. Its great themes are, God as Christ has made him known, and man, sin, salvation, duty, life, and destiny, in the light of Christ's revelation" (p. 6).

ALCUBILLA, DICCIONARIO DE LA ADMINISTRACIÓN ESPAÑOLA, (Fifth edition, Madrid, 1892), TOMO 3, P. 4.

Spanish.	English.
"Tuvo, por tanto, el Concilio de Trento una immensa importancia en la época en que se celebró, y la tiene hoy, y la tendrá siempre en los Estados católicos, y más en España, donde se mandó guardar y cumplir por la ley 13, tit. I, libro I, de la Nov. Recop., cuyo imperio ha sido confirmado por el art. 75 del Código Civil."	The Council of Trent, therefore, had an immense importance at the time it took place, and so it has today, and so will it always have in the Catholic States, and more so in Spain, where it was ordered followed and complied with by law 13, tit. I, Book I, of the Nov. Rec., whose force has been confirmed by Art. 75 of the Civil Code.

3 DIC. ENCI. HISPANO-AMERICANO, (Barcelona, 1888), P. 464.

Spanish.	English.
"El beneficio eclesiástico sólo permite á los clérigos el derecho de usar de las cosas de la Iglesia, puesto que los cánones no conceden sino facultad de tomar de la renta eclesiástica *la porción indispensable para satisfacer sobriamente las necesidades materiales de la vida,* debiendo emplear el resto en obras de caridad."	An ecclesiastical benefit allows the clergymen only the right to use the properties of the church, inasmuch as the canons do not allow but the taking from the ecclesiastical rent *the portion indispensable to satisfy in a moderate manner the material necessities of life,* with the obligation of applying the remainder in charitable works.

4 DIC. ENCI. HISPANO-AMERICANO, (Barcelona, 1888), P. 530.

Spanish.

"Claro es, que si las condiciones impuestas por el fundador son contrarias al Derecho, sólo valdrán cuando la autoridad eclesiástica las haya concordado y admitido, y siempre que no se opongan á la naturaleza de la capellanía ó del derecho de patronato que puede irle unido." (Capitulos II, Tit. V, 32 Tit. 28, y 16 Tit. 39, Libro III de los Decretales.)

English.

It is clear that if the conditions imposed by the founder are contrary to law, they will be valid only in so far as the ecclesiastical authorities may have approved and admitted them, and provided further that they are not against the nature of chaplaincies or the right of patronage attached to it. (Chap. ii, Tit. V, 32 Tit. 28, and 16 Tit. 39, Book III of the *Decretales*.)

VI.

TESTIMONY OF PLAINTIFF (R. 149-152).

RAUL ROGERIO GONZALEZ, who will be 14 years of age on September 16th of this year, residing in Baliwag, Bulacan, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GIBBS: What is your father's name?

A. Angel Gonzalez.

Q. And your mother's name?

A. Adelaida Gonzalez.

Q. Do you go to school?

A. Yes, sir.

Q. In what grade are you?

A. In the sixth grade.

Q. What subjects do you study in the sixth grade?

A. Arithmetic, geography, spelling, phonics, conversation, English and good manners.

Q. Who is your teacher in the sixth grade?

A. Mr. Claudio Borja.

Q. Do you obey your parents?

MR. FERIA: The question is leading.

COURT: Objection sustained.

MR. GIBBS: Exception.

Q. State whether or not you obey your parents.

A. I do.

Q. What do you want to be, as regards your future career?

A. Yes, sir.

Q. What do you want to be?

A. I want to be an archbishop.

Q. Do you want to be a priest before you become an archbishop?

A. Yes, sir, I want to be a priest first.

Q. Please state whether or not you want to study so as to qualify as a priest.

A. Yes, sir.

Q. Do you know whether your parents will be able to support you while preparing for the priesthood?

MR. FERIA: Objected to, witness is incompetent to testify about that.

COURT: Objection overruled.

MR. FERIA: Exception.

A. My parents are poor.

MR. GIBBS: That is all.

CROSS-EXAMINATION OF PLAINTIFF BY DEFENDANT'S COUNSEL.

MR. FERIA: Is it not true that you would prefer to get married when you grow up?

A. No, sir.

Q. *Do you know what a priest is?*

A. *No, sir.*

Q. Is it not true that you do not know what property your parents have?

A. They have nothing that I know of.

Q. Is it not true that your parents have property of which you are not aware?

A. I think that they have none.

Q. Did you ask your parents about what property they have?

A. No, sir.

Q. Why do you say that they have no property?

A. That is what I know and also because they have nothing with which to spend for me.

Q. Why do you know that they have nothing to spend for you?

A. Because they can hardly buy my clothing. The clothing I have was purchased by my aunt.

Q. Is it not true that your parents did not buy clothing for you because your aunt bought it for you?

A. They did not buy any clothing for me because they had no money.

Q. Why do you know that they have no money?

A. Because they cannot buy what I need most.

Q. What is it that you need most which they cannot buy?
A. Toys, for example, and the things I need in school.
Q. Did you ask your parents to buy you toys?
A. Yes, sir.
Q. When?
A. Long ago.
Q. Two years ago?
A. Not quite.
Q. More than a year ago?
A. Yes, sir.
Q. What toys did you ask your parents to buy for you?
MR. GIBB: That is immaterial.
COURT: Objection sustained.
MR. FERIA: Exception.
Q. Is it not true that when you asked your parents to buy you toys, your parents did not give you any because you did not obey them sometimes?
A. No, sir, I always obeyed them.
Q. Is it not true that you were spanked by them?
A. Yes, sir.
Q. Is it not true that your parents often spanked you?
A. No, sir, very rarely.
Q. Is it not true that you were spanked by your parents at least once a month?
A. Sometimes not even once a month.
Q. But sometimes more than once a month?
A. No, sir.
Q. *Do you know what training is needed to be a priest?*
A. *Yes, sir.*
Q. *What?*
A. *To say mass.*
MR. FERIA: That is all.
RE-DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL:
MR. GIBBS: Do you know what subjects you must study in order to prepare for the chaplaincy?
MR. FERIA: I object to the question because it is based on facts not established.

COURT: Objection overruled.
A. *I know of only one.*
Q. What is it?
A. *Theology.*
MR. GIBBS: That is all.
FURTHER CROSS-EXAMINATION BY
MR. FERIA: *Do you know what theology is?*
A. *Not until now.*
Q. *Is theology a man, a person?*
A. *I do not know.*
Q. *Is theology not money?*
A. *No, sir.*
Q. *What is it?*
A. *I do not know what it is.*
MR. FERIA: That is all."